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STATE OF KENTUCKY. Gov. Brown

GOVERNOR'S MESSAGE.

John Young Brown

JANUARY 2, 1894.

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Kentucky. Governor

MESSAGE

OF

GOV. JOHN YOUNG BROWN

TO THE

GENERAL ASSEMBLY OF KENTUCKY,

AT THE

REGULAR SESSION, JAN. 2, 1894.

FRANKFORT, KY.:
PRINTED BY THE CAPITAL PRINTING CO.
1894.

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GOVERNOR'S MESSAGE.

Gentlemen of the Senate and House of Representatives:

I beg to express to the members of your honorable body assurances of my high respect and best wishes for your health and happiness. I have an abiding trust that the work confided to you will be performed with such intelligence and faithfulness as will greatly promote the general welfare of the people, who have commissioned you as their representatives, and of whom we are servants.

Your immediate predecessors were in session for eighteen months. Their labors were tedious, and in some respects difficult, in adjusting and providing laws to meet the requirements of the new Constitution. There was no limitation as to the length of their session. Absenteeism, unfortunately, prolonged it. It was the judgment of the framers of the Constitution that the General Assembly could henceforth perform their necessary work in sixty legislative days, exclusive of Sundays and legal holidays. The present methods of legislation are much slower than under the old Constitution. In order to accomplish your mission, it will be necessary to expedite your business, or you will find much of it unfinished when the limit of your meeting shall have been reached. I regard this provision of our organic law as a wise one. With proper industry, and a patriotic spirit that will rebuke factious obstruction of legislation, the General Assembly, in the allotted time, can accomplish all that the public could reasonably require at their hands.

I am disposed to put the Constitution, in this particular, to the test, and the circumstances must be extraordinary to induce me to exercise the power vested in me of prolonging the session of your honorable body. To do so, unless the demand therefor should be extreme, would be a bad precedent. It is practically in the power of a Governor of the State to nullify the rule of the Constitution, and

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I shall not be the one to do so unless I feel justified by the existence of exceptional conditions and insuperable necessity, which I do not anticipate. There is a responsibility in this matter that attaches to you, which, I am sure, you will not hesitate to assume.

It is made the duty of the Chief Executive, from time to time, to give to the General Assembly information of the state of the Commonwealth, and recommend to their consideration such measures as he may deem expedient.

THE DEPARTMENTS.

The reports from the various State departments will be presented to your honorable body by the heads thereof, and will, no doubt, receive careful attention at your hands. The work of the State Inspector, in addition to that contained in his regular reports of the monthly investigations of the settlement between the Auditor and Treasurer, has been especially praiseworthy, and by his diligence and intelligent efforts he has unearthed several official delinquencies, and saved a large sum to the Commonwealth.

The control, in a large measure, of home and foreign corporations was, by the last Legislature, placed in the hands of the Secretary of State. This work, while yet but newly tried, is in good condition, and I believe the inspection will prove beneficial to the interests of legitimate corporations.

I desire to commend the intelligent and economical work done in the Adjutant-General's department. The cost of the recent encampment at Bowling Green is a vindication from the criticisms made because of a disallowance of various bills created at a previous encampment.

The State Guard is a valuable support of the Commonwealth. In emergencies that have occurred, their aid has been invoked, and their response in service has been such as to command the admiration and gratitude of the people. At Bardstown, in recent troubles, the presence of the troops sustained the authority of law by repressing a mobocratic spirit and supporting the authorities of the State in a proper trial of one accused of crime, according to the fixed rules of justice. Of the faithfulness and courage of the men in service there in the face of danger and grave difficulties, too much praise can not be spoken.

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LUNATIC ASYLUMS.

There are now confined in the three lunatic asylums of the State 2,337 patients, an increase of 217 since October, 1891. They are distributed as follows:

Western Asylum	625
Central Asylum	942
Eastern Asylum	770
	2,337

These institutions are now full. It is imperative that arrangements shall be made to enlarge one or more of them. I would advise that additions be made to the Central Asylum, on the cottage plan, so that it can receive several hundred more inmates. I earnestly urge your honorable body to give this matter your immediate attention, and recommend that you shall make a liberal appropriation for the purpose indicated. If you fail to provide sufficient accommodations for lunatics, then many of this afflicted class will have no refuge for their custody and treatment, and must suffer from the neglect of the State to arrange for their care.

TAXATION.

I have made a careful estimate of the receipts and probable ordinary expenditures of the State up to the close of the fiscal year, June 30th, 1894. I am of the opinion that there will be a large balance in the Treasury at that time. The financial conditions have been severe for more than a year past. All tax-payers have keenly felt the burden of meeting their obligations; I believe that the tax rate may be safely reduced several cents on the one hundred dollars. When times are so stringent, and the prices of all our products, agricultural and mechanical, are so low, we should favor no appropriations except such as are absolutely necessary. When the pockets of the people are full, by reason of plentiful crops, good prices and general prosperity of all of the industries of the State, then the General Assembly may call on them to give of their wealth a portion for public improvements, but should not until then.

Before they should be asked to pay taxes for extraordinary purposes in any large amount, they should be invited to consent to it by

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a vote at the polls for the specified sums required, with full information of the object to which such tax will be devoted.

LOTTERIES.

In my first message to the last General Assembly, I called attention to the lotteries which were openly in operation in the State, claiming protection under the false plea of "vested rights." I urged that this was no shield for them, and that, by virtue of a decision of the Supreme Court of the United States, their tainted claim had no foundation in law, but should go down before the comprehensive sweep of the police power of the Commonwealth. The legislation recommended was adopted.

It is most gratifying that our Court of Appeals, by a recent decision, in an able opinion rendered by Chief Justice Bennett, have torn up these baneful institutions by the roots, and our State in the future will not be cursed by their corrupting influences, which reached high and far in their shameful and amazing power.

The lotteries in Kentucky are dead. It was humiliating to see those upon whom they placed the collars of their bondage, and held in their leprous embrace. The wages of their slaves have ceased. In the name of the people, I salute, with thanks, our incorruptible Court of Appeals for their just decision. It will purify the atmosphere of the State, even if it shall deprive some persons of their long enjoyed stipends.

COLUMBIAN EXPOSITION.

The Kentucky Board of Managers of the Columbian Exposition have made their report, which is transmitted to your honorable body. Of the appropriation of $100,000, they have returned to the Treasury of the State the sum of $20,000, retaining in their hands about $7,500. They have been sued for the sum of $5,000 by S P. Gross, who claims damages under his contract for keeping the restaurant at the Kentucky Building, for which the law provided. There are yet some unpaid accounts, which will be adjusted when ascertained. When the suit of Gross shall have been decided, the balance remaining in the hands of the Board of Managers will be promptly paid into the Treasury, and a final report made.

I heartily congratulate the gentlemen composing this Board upon

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their work. They have discharged their duties with faithfulness and integrity. The State has reason to be proud of its exhibits at the Exposition, and the people owe a debt of gratitude to the State's managers. They had very many difficulties to contend with, but have acquitted themselves well, and I most cordially thank them for the honest discharge of their duties.

LAWS.

I recommend the enactment of a general law for the government of cities of the second class, which failed in the last General Assembly.

Under section 166, of the Constitution, this must be done by this General Assembly. If not, it seems that a dissolution of the governments of cities of this class would occur by the terms of said section after the 1st of January, 1895.

Section 252 of the Constitution reads as follows:

"SEC. 252. It shall be the duty of the General Assembly to provide by law, as soon as practicable, for the establishment and maintenance of an institution or institutions for the detention, correction, instruction and reformation of all persons under the age of eighteen years, convicted of such felonies and such misdemeanors as may be designated by law. Said institution shall be known as the "House of Reform."

It will be observed that the Constitution says it shall be the "duty" of the General Assembly, as soon as "*practicable*," to provide for the establishment of the "House of Reform." I request the very careful consideration of the subject by your honorable body. It will be a very expensive institution, and its utility is to be demonstrated by trial. If established, its plan and the details of its management should be provided for with the utmost care.

A law regulating voluntary assignments is needed. On this important subject there is really no statute except the few sections on page 1251 of the General Statutes, under the title of "Trustees." The last Senate passed a law relating to the matter, but it was defeated in the House. Every lawyer knows the necessity for a law on this subject, providing a way for the speedy and inexpensive settlement of insolvent estates and the distribution of the proceeds of the property assigned.

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The present statutes on charitable institutions are very imperfect and confused. They should be revised and embraced in one chapter. The laws relating to the Feeble-minded Institution, the Deaf and Dumb Institute, the Blind Asylum, and the Lunatic Asylums, are difficult to find. Hardly one-half of those regulating the Blind Asylum and the Deaf and Dumb Institute are embraced in the General Statutes, but are scattered through Session Acts from 1822 to 1890. In a less degree the same is true of the Feeble-minded Institution.

There is considerable confusion concerning the appointment and duties of election officers, especially in fifth and sixth class towns. There should be on this subject a uniform law, giving either to the county court, or the town council, the power to select election officers, provide ballots, &c. The provision in the charter for fourth class cities also in regard to ward elections is obscure, and should be made clear.

VACANCIES IN OFFICE.

It is provided in section 152 of the Constitution that "vacancies in all offices for the State at large, or for districts larger than a county, shall be filled by appointment of the Governor; all other appointments shall be made as may be prescribed by law."

It will be observed that under this provision the Governor has no power of appointment of an Appellate or Circuit Judge or Commonwealth's Attorney, except "for districts larger than a county," unless prescribed by law. Jefferson county, for instance, has four Circuit Judges and a Commonwealth's Attorney, and will be entitled to one Appellate Judge. There are other judicial districts confined to a single county. Should a vacancy occur there in these offices, the district not being larger than a county, the Governor could not, under the Constitution, fill it by appointment, unless authorized by law to do so. There is no such law, and no power lodged anywhere to fill such vacancy. This matter needs your immediate attention.

PUBLIC PRINTING.

The law providing for contracts to be let by the Commissioners of Public Printing—the Commissioners of the Sinking Fund having been charged with that duty—have been unable to adopt any satisfactory form embracing the several grades of paper upon which

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proposals could be invited. Bids have been solicited and received for the supply of paper, but none accepted by reason of the confusion of the bids. The existing law needs amendment, that it may be intelligently executed. Large sums have been expended by the State for printing and paper. For the year ending June 30th, 1890, there was paid for public printing, $40,670.88; for paper for same, $14,571.30; for record-books, not then, but now, required to be furnished by the Public Printer, $23,116.65. For the fiscal year ending June 30th, 1891, there was paid for Public Printing, $75,878.89; for paper for same $17,848.08; for record-books, $25,744.63. The increase for 1891 was caused by the printing necessary to be done for the Constitutional Convention, including three large volumes of debates.

It seems to me to be indispensable, in order to protect the State, that provision should be made for the appointment of a capable and experienced supervisor of the public printing, paper and supplies. Such an official, under proper bond, and required to report monthly all purchases and deliveries of paper; also a careful statement of the measures of the completed work of the Public Printer could, in my opinion, save to the State a sum largely in excess of any reasonable salary provided for him. This officer should be one of practical experience in the line of the duties he would have to discharge.

PENITENTIARIES.

There are now confined in the Frankfort Penitentiary 1103 convicts, and at Eddyville 504. About 600 men are now at work at the Frankfort prison, manufacturing chairs, a contract having been made to dispose of the output to the extent of $18,000 per month. It is hoped that this limit will soon be reached by the product, and at an early day exceeded. If a similar contract can be made for the disposal of brooms that could be manufactured there, it would put this prison on a self sustaining basis. The labor of the convicts in the Eddyville prison is leased to the Mason and Foard Company.

I heartily favor a change in the management of the penitentiaries. At present the Sinking Fund Commissioners, composed of the Governor, Secretary of State, Auditor, Treasurer and Attorney-General, are by law made directors of the penitentiaries. Section 254 of the Constitution reads:

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"The Commonwealth shall maintain control of the discipline, and provide for all supplies, and for the sanitary condition of the convicts, and the labor only of convicts may be leased."

Under existing laws, it is made the duty of the Warden to provide clothing, food, and all necessary supplies for the convicts. This is an immense business confided to one man, who has many other duties to attend to. He certifies his accounts monthly to the Board of Directors, and they reach very large amounts. There is no time for their proper scrutiny, and if there were ample time for the board to examine the accounts, they could do little more than verify the additions, as they could have no personal knowledge of prices of many articles, or the necessity for their purchase, or the fact of their delivery.

The present system of management of this prison is, in my judgment, loose, dangerous and not based on safe business methods. I do not mean to be understood as criticising the official acts of the present or former Warden; it is the existing law to which I object It offers too great opportunities for fraud and extravagance, which may be safely indulged in, for the reason that no thorough and safe supervision of the expenditures is provided for. They are left entirely to the discretion of the Warden. Many thousands of dollars' worth of lumber must be annually purchased, of which the chairs are to be manufactured—and all of this is confided to one agent, with full power, and no supervision, except that of the Sinking Fund Commissioners. These Commissioners are busy men, whose time is fully occupied by their regular official duties. They have no experience or special knowledge qualifying them to be practical judges of many of these matters which they are expected to regulate.

My deliberate judgment is that the General Assembly should provide for the appointment of a board consisting of three persons, into whose hands the control of the penitentiaries should be placed. Let the board be given ample power to appoint and dismiss all officers and guards; have full control of these institutions in regulating discipline and providing supplies, and be required to report monthly their contracts, expenses and proceedings generally.

If such a board of honest and capable men could be put in control of these prisons, it would be a guarantee of safety to the State; it would divorce prison management from politics, and save the State

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many times the amount of their salaries, which should be liberal, in order to secure the services of the best men. No private citizen, owning and conducting a large business, would for a day accept the system of which I complain as the method of management of his individual affairs; and the State should not tolerate it. I ask your immediate consideration of these suggestions, as no more important subject of legislation will come before you.

COMPROMISE OF STATE ASSESSMENTS.

I have had my attention called to the fact by the Railroad Commissioners that in some cases the assessments made by them of the properties of railroads, and to enforce the payment of which suits had been instituted in the Franklin Circuit Court, have been recently compromised to the detriment of the State. I know of no authority given any official of the Commonwealth to agree to accept, on behalf of the State, a less amount than the assessment made in such cases. An attorney can not compromise the case of his client without special authority. I believe that an investigation of this matter will satisfy your honorable body, that you should enact a law expressly forbidding such unauthorized practice in court by any representative of the State.

The Railroad Commissioners could not alter their assessments after they were reported. The Governor could not do it, nor could the Board of Sinking Fund Commissioners. Why should any attorney do it? The records of the Franklin Circuit Court will furnish abundant evidence of the necessity for the enactment of such a statute. As I have indicated, claims of the State, asserted by suit, to which no answers controverting the allegations of the petitions were filed, have been adjusted at amounts largely less than the assessments, and judgments entered accordingly. They should be appealed. The Court of Appeals would instantly reverse them as erroneous, as there is an absence of pleadings or proof disputing the amounts sued for.

CONSOLIDATION OF RAILROADS.

Section 201 of the Constitution reads as follows:

"No railroad, telegraph, telephone, bridge or common carrier company shall consolidate its capital stock, franchises or property, or

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pool its earnings, in whole or in part, with any other railroad, telegraph, telephone, bridge or common carrier company, owning a par allel or competing line or structure, or acquire by purchase, lease or otherwise, any parallel or competing line or structure, or operate the same; nor shall any railroad company or other common carrier combine or make any contract with the owners of any vessel that leaves or makes port in this State, or with any common carrier by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying."

Prior to November 3, 1893, there had been negotiations pending between the Louisville and Nashville Railroad Company and the Chesapeake, Ohio and Southwestern Railroad Company, looking toward the purchase by the Louisville and Nashville Railroad Company of the properties of the Chesapeake, Ohio and Southwestern.

As the Chesapeake, Ohio and Southwestern main line was the only parallel and competing line with the Louisville and Nashville Railroad Company through the State of Kentucky from Louisville to Memphis, Tenn., and as the other lines of the Chesapeake, Ohio and Southwestern were competing lines of the Louisville and Nashville Railroad lines throughout their entire length, and as the Chesapeake, Ohio and Southwestern system had been very largely built by subscription from the different counties and cities of Kentucky, expressly for the purpose of having a competing line with the Louisville and Nashville Railroad Company, naturally this attempt to stifle competition demanded the attention of the Commonwealth and its Executive. The result was a public announcement in the newspapers, some days afterwards, that the Commonwealth was having the matter investigated; and the clause of the new Constitution forbidding such a transaction was brought to public notice. Up to this time it appears that the railroad companies had not regarded this clause.

On December 11th, the suit of the Commonwealth against the railroad companies, in the Louisville Chancery Court, was begun. The Louisville and Nashville Railroad Company, in its answer to that suit, filed December 20th, 1893, stated that it had the *right* to make the purchase of the Chesapeake, Ohio and Southwestern lines, and admitted that it had become the owner or the holder of certain securities in the Chesapeake, Ohio and Southwestern Railroad Company, and alleged that "it is expected that proceedings in the

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Federal Court will be instituted for the foreclosure and enforcement of certain liens on the Chesapeake, Ohio and Southwestern Railroad Company. When this shall be done, then it expects to become a bidder at that sale, and if its bid shall be accepted by said court and the properties conveyed to it by order of said court, it shall expect to operate the same, but not until then."

The petition of the Commonwealth made the following allegation among others: "And the Louisville and Nashville Railroad Company is about to acquire, by purchase, lease or otherwise, the said parallel and competing lines and structures, and is about to operate the same, and to control the operation thereof."

This allegation was not denied in the answer of the Louisville and Nashville Railroad Company.

On the 16th of December there was a meeting of the Board of Directors of the Chesapeake, Ohio and Southwestern Railroad, held in New York, and at that meeting the board directed judgments to be confessed in favor of C. P. Huntington for about $83,000 against the C., O. & S. W. On December 18th, suit was quietly filed by Huntington, in Memphis, Tennessee, and the next day (December 19th) judgment was confessed by the Railroad Company in Huntington's favor, and execution was issued from the Memphis court and a return of no property obtained; and on that same day (December 19th) a transcript of that judgment and return of no property was filed in the Graves Circuit Court of Kentucky, and again judgment was confessed, so as to make it a Kentucky judgment, and a return of no property was had there on the same date.

On December 22d a bill was presented to Judge Lurton at Nashville, asking the appointment of General John Echols as receiver of the C., O. & S. W. system. Judge Lurton, however, had received a telegram from the attorneys for Kentucky, and refused to make the order until they could be notified, and set the hearing of the motion at Clarksville, Tennessee, for December 28th. The attorneys for Kentucky appeared in Clarksville, and presented a petition of intervention on behalf of the Commonwealth, asking to be heard in the appointment of receiver.

Huntington and the C., O. & S. W. Company were represented by Mr. Holmes Cummins, General Echols and Judge William Lindsay, of Frankfort. The L. & N. Railroad Company was repre-

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sented by Mr. Ed. Baxter, of Nashville, Tennessee. They claimed that the Commonwealth had no right to a hearing in the matter, and should not be allowed to have any voice in the selection of a receiver. After a very full argument the court decided that the State had the right to be heard, and allowed its attorneys to name a receiver in behalf of this Commonwealth. The name of Mr. St. John Boyle was suggested, and he was appointed along with Gen. Echols.

The contention was, that a railroad is a public highway belonging to the State; that the State intrusts the operation of this highway—the franchise to operate and take tolls upon it—to the corporation; that the corporation thus becomes the agent of the State. When this agent is to be removed, and another agent is to be appointed to operate this franchise of the State and the State's highway, that the State was a party interested, and entitled to be heard. It was further contended that the State was entitled to be heard in any court of equity to prevent an act being done against public policy, and in violation of the Constitution and laws.

There was no way of *preventing* a receiver being appointed for these C., O. and S. W. properties, because they had made defaults of their indebtedness to such an extent that a receiver could undoubtedly be appointed on behalf of creditors; therefore, the only thing to do was to see that the State had a representation in the receivership so as to prevent it from being used with a view to furthering the illegal purchase by the Louisville and Nashville Railroad.

When the property comes to a sale, if the L. and N. undertakes to become a bidder, there will be objections on behalf of the State, and efforts made to prevent the consummation of the purchase.

In the meanwhile the suit in the chancery court will proceed, and evidence be taken to develop the facts, and injunction asked to restrain the further carrying out of the illegal deal.

It seems that, since action by the State in this matter, the attitude of the interested railroads is such as to indicate that they are ready to adjust themselves to any position necessary to accomplish these schemes, and defeat the inhibitory provision of our Constitution.

I beg to assure the people that nothing shall be left undone on my part to protect the integrity of our Constitution, and that none of its provisions shall be surrendered until overruled by the judgment of the highest courts.

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If this proposed scheme of consolidation of these railroad lines shall be accomplished, it will nullify our constitutional restriction, and put unspeakable burdens on the people. The success of this deal will make a giant monopoly, which can handcuff the commerce of the State, and control by its political power the State government, having Governors, United States Senators and other officials the mere creatures of its selection. I propose to stand by the Constitution.

OFFICIAL CONTROL OF RATES.

The manifest tendency of the railroads is toward consolidation, the greater and more powerful lines absorbing the weaker ones. Already the railroad mileage of Kentucky is practically controlled by four corporations. Should the effort of the L. and N. to secure the C., O. and S. W. and branches succeed, almost two-thirds of the mileage will be in the hands of that great corporation. The people have vainly attempted to secure relief from railroad monopoly by subsidizing new lines, only to have them swallowed up by those with which they were built to compete. It will be a great advantage to our commerce to vest the Railroad Commission with plenary power in fixing freight and passenger rates. This has been done with success in other States, and without detriment to the railroad properties. Kentucky has been a laggard in the procession. In inviting the attention of the General Assembly to this subject, I respectfully urge that at the present session the Railroad Commission shall be at least empowered to establish a maximum scale of rates upon coal, a most necessary commodity in every household. There is hardly a town in Kentucky that is more than one hundred miles from a good coal mine. Nowhere in this Commonwealth, so abundantly provided with this precious mineral, should coal sell for exceeding ten cents per bushel. A comparison of rates on coal as charged by the railroads in Kentucky, Illinois, Ohio, Virginia, Georgia, North Carolina, Iowa and Minnesota, shows that the Kentucky rates are uniformly much higher than in any of the other States named.

I recommend the passage of an act to promote the safety of employes and travelers upon railroads by compelling common carriers in this State to equip their cars with automatic couplers and continuous brakes, and their locomotives with driving wheel brakes.

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The separate coach law became operative on the 3d of October last, and I am informed that it has been enforced without difficulty upon all save one or two railroad lines. I hope that the proper local authorities will see that this law is everywhere impartially executed.

I sincerely hope that your stay in Frankfort may in every respect be most pleasant, and your work in legislation be so well done as to secure you on your return to your homes the plaudits of your constituents.

Very respectfully,

JOHN YOUNG BROWN.

EXECUTIVE OFFICE, January 2, 1894.

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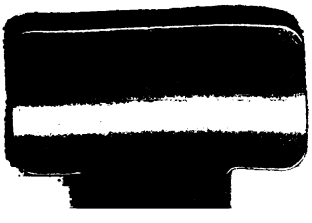

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